

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MELVIN GRAYER, #08710	PETITIONER
§	
§	
§	
v.	Civil No. 1:17cv260-HSO-MTP
§	
§	
TROY PETERSON	RESPONDENT
§	

**ORDER ADOPTING MAGISTRATE JUDGE'S [31] REPORT
AND RECOMMENDATION, DISMISSING PETITION
FOR WRIT OF HABEAS CORPUS AS MOOT, AND DENYING
RESPONDENT'S [15] MOTION TO DISMISS AS MOOT**

This matter comes before the Court on the Report and Recommendation [31] of United States Magistrate Judge Michael T. Parker, entered in this case on December 13, 2018, and on Respondent's Motion to Dismiss [15] filed on May 21, 2018. Petitioner Melvin Grayer has filed a Response to the Report and Recommendation [31]. After due consideration of Respondent's Motion to Dismiss [15], the Magistrate Judge's Report and Recommendation [31], Petitioner's Response [32], the record, and relevant legal authority, the Court finds that the Magistrate Judge's Report and Recommendation [31] should be adopted, that Petitioner's Petition for Writ of Habeas Corpus should be dismissed as moot, and that Respondent's Motion to Dismiss [15] should be denied as moot.

I. BACKGROUND

On September 20, 2017, Petitioner Melvin Grayer ("Petitioner") filed a Petition [1] under 28 U.S.C. § 2254 for writ of habeas corpus by a person in state

custody, followed by an Amended Petition [6] on October 24, 2017. Petitioner claimed that he was indicted in the Circuit Court of Harrison County, Mississippi, First Judicial District, on two charges on February 8, 2016, but never brought to trial. Petitioner asserted that the delay in prosecution had prejudiced him and that his right to a speedy trial had been violated. Petitioner asked the Court to dismiss the two pending charges against him. *See* Am. Pet. [6] at 9-11. On May 21, 2018, Respondent Troy Peterson filed a Motion to Dismiss [15], arguing that the Petition was moot because the two charges had been “passed to the files.” The Magistrate Judge ordered supplemental briefing from the parties on the issue of mootness.

On December 12, 2018, however, the state court dismissed the two charges that were the subject of the habeas petition, and Respondent filed a Reply [30] attaching the state court’s dismissal orders as exhibits. On December 13, 2018, the Magistrate Judge entered a Report and Recommendation [31] recommending that, in light of the dismissal of the two charges at issue, the Petition be dismissed as moot and that Respondent’s Motion to Dismiss [15] be denied as moot.

Petitioner has filed a Response [32] to the Report and Recommendation [31]. According to Petitioner, “[h]e does not object to the Recommendation, and has choosen [sic] to bring this matter to a closure to be dismissed as moot.” Resp. [32] at 1.

II. DISCUSSION

Where no party has objected to a magistrate judge’s report and recommendation, the Court need not conduct a de novo review of it. 28 U.S.C. §

636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). In such cases, the Court applies the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court concludes that the Magistrate Judge’s findings are not clearly erroneous, nor are they an abuse of discretion or contrary to law. *See id.* In light of the dismissal of the state court charges against Petitioner, the Petition is moot, and dismissal is warranted. This dismissal renders Respondent’s Motion to Dismiss [15] moot.

III. CONCLUSION

The Court will adopt the Magistrate Judge’s Report and Recommendation [31] as the opinion of this Court, will dismiss the Petition for Writ of Habeas Corpus [1] as moot, and will deny Respondent’s Motion to Dismiss [15] as moot.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [31] of United States Magistrate Judge Michael T. Parker, entered in this case on December 13, 2018, is **ADOPTED** in its entirety as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Petitioner Melvin Grayer’s Petition for Writ of Habeas Corpus is **DISMISSED AS MOOT**.

IT IS, FURTHER, ORDERED AND ADJUDGED that, the Motion to

Dismiss [15] filed by Respondent Troy Peterson on May 21, 2018, is **DENIED AS MOOT.**

SO ORDERED AND ADJUDGED, this the 18th day of January, 2019.

s/ Halil Suleyman Ozerdem

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE